

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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**In the Matter of:**

**ROBERT S. LUCE,**

**Respondent.**

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**Docket No. 08-3546-DB**

**DEBARRING OFFICIAL'S DETERMINATION**

INTRODUCTION

By Notice of Proposed Debarment dated May 27, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ROBERT S. LUCE that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of the final determination of this action. The Notice further advised Respondent that his proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424.

In addition, the Notice informed Respondent that his proposed debarment was based upon his providing to HUD two false Title II Yearly Verification Reports (Reports). Respondent falsely certified, in his capacity as president of MDR Mortgage Corporation, that no principal of MDR was involved in a proceeding and/or investigation that could result in a criminal conviction. At the time Respondent executed the certifications, Respondent was under indictment for committing securities fraud, obstruction of proceedings before departments, agencies, and committees, wire fraud, and aiding and abetting.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on July 1, 2009, before the Debarring Official's Designee, Mortimer F. Coward. Respondent failed to appear.<sup>1</sup> Michael Milner, Esq. appeared on behalf of HUD.

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<sup>1</sup> Respondent was notified in an Order issued April 27, 2009, by the Debarring Official's Designee that the hearing was set for July 1, 2009. The matter previously had been continued and then stayed on the Government's motion pending the parties' attempts to settle the matter.

## Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated May 27, 2008.
2. A letter dated June 26, 2008, from Respondent requesting HUD's withdrawal or reconsideration of the proposed debarment.
3. A twenty-three-count indictment filed in the United States District Court for the Northern District of Illinois charging Respondent along with ten co-defendants with committing several criminal offenses in violation of federal law.
4. The Government's Pre-Hearing Brief filed October 16, 2008 (including all exhibits and attachments thereto).

## Government Counsel's Arguments

Government counsel argues that Respondent at all relevant times was president and owner of MDR, an FHA- approved lender. As a requirement for its annual recertification as a FHA-approved lender, a mortgagee is required to submit its Yearly Verification Reports ("Vforms") to HUD. The Vforms contain language that requires the signatory to certify that none of the principals or owner of the lender, among others, is involved in a proceeding or investigation that could result in a criminal conviction. Respondent submitted the Vforms for MDR for recertification for the years 2007 and 2008 on January 23, 2007, and January 29, 2008, respectively. At the time Respondent executed the certification, Respondent was the subject of an indictment that had been filed on April 7, 2005, in the United States District Court for the Northern District of Illinois, charging Respondent with, *inter alia*, wire fraud, mail fraud, making false statements, and obstruction of justice. Respondent pleaded guilty on July 15, 2008, to one count of obstruction of justice.<sup>2</sup>

Counsel argues that, as the owner and operator of an FHA-approved mortgagee, Respondent was a participant or principal in a covered transaction and is subject to HUD's debarment regulations. Counsel continues that Respondent's conduct provides cause for his debarment under 2 CFR 180.800(b). Respondent's submission of false Vforms compromised the integrity of the FHA mortgage insurance program by causing HUD to approve approximately 2500 FHA-insured mortgage loans originated by MDR, an ineligible lender. Counsel argues further that Respondent's actions were knowing and

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<sup>2</sup> At the time the Government filed its brief, Respondent had not yet been sentenced. In January 2009 (later corrected in an Amended Judgment filed in March 2009), Respondent was sentenced to three years' probation and fined \$30,100.00.

willful, constituting an independent ground for debarment under 2 CFR 180.800(b)(1). Counsel emphasizes that as an attorney with over thirty-six years' experience along with being a former law professor and Government attorney, Respondent must have known that his indictment had the potential to result in a criminal conviction. Moreover, Respondent's actions were no mistake because Respondent twice made the false certifications. Counsel also charges that Respondent's submission of false certifications is considered a failure to perform one or more public agreements or transactions. Similarly, because Respondent's failure to perform occurred more than once, it demonstrates a "history of failure to perform." *See* 2 CFR 180.800(b)(2). As a further independent ground for Respondent's debarment, counsel, citing 2 CFR 180.800(d), points to Respondent's actions as indicating a "lack of business integrity or business honesty that seriously affects his present responsibility." For these reasons, counsel argues that the Government has met its burden of proof to impose a debarment.

In arguing further for Respondent's debarment, counsel notes that, pursuant to 2 CFR 1280.825, HUD is authorized to impose debarments to protect the public interest. The protection of the public interest, counsel asserts, requires the Government to do business with persons who are forthright and responsible in their dealings. Respondent's actions, however, show that he is untrustworthy and his continued participation in federal programs would place Government funds at risk. Accordingly, "based upon the gravity of Respondent's conduct," counsel urges the Debarring Official to impose a three-year debarment on Respondent.

### Respondent's Arguments

Respondent, in his submission of June 26, 2008, first outlines the background to the federal charges that resulted in his conviction. Respondent then specifically responds to HUD's "assert[ion] that incorrect information was provided to HUD in [his] capacity as the president of an FHA approved lender." Respondent argues that it was his "interpretation of those questions that they were directed at possible charges relating to the mortgage industry. [He] did not understand the questions<sup>3</sup> to have a broader meaning." Respondent also argues that for the following reasons, the debarment should be withdrawn:

He should be entitled to the constitutional presumption of innocence regarding the charges in the Notice of Proposed Debarment before a final determination is made. None of the charges alleges that he asked any person to lie; that he lied or that he took any person's money or property.

The Illinois Attorney and Disciplinary commission [sic], the agency [that] licenses Illinois attorneys, has permitted [him] to continue to practice while these charges are pending.

He does not engage in the origination of mortgage loans.

The [federal] charges are unrelated to the mortgage industry.

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<sup>3</sup> Respondent does not identify the specific "questions" to which he is referring. A fair guess, however, may be the certifications on the Vforms, which HUD alleges were falsely executed.

The charges principally relate to technical interpretations of certain rules and regulations under the Federal Securities laws.  
The Federal agency that has preeminent knowledge in this area, namely, the United States Securities and Exchange Commission, and [sic] has not brought any action against [him].  
[He has] steadfastly maintained [his] innocence of these charges.

Respondent concludes by stating that he has been an attorney/businessman for many years and has never been the subject of any legal proceeding alleging that he engaged in illegal conduct. Respondent protests that he handled the matters described in the federal charges in good faith and apologizes for his "misunderstanding of the interpretation of the questions."

### Findings of Fact

1. Respondent was an experienced attorney and a former law professor and Government attorney who, at all relevant times, was also the president<sup>4</sup> and owner of an FHA-approved lender, MDR Mortgage Corporation.
2. Respondent completed and submitted the Vforms to HUD on behalf of MDR for 2007 and 2008 on January 23, 2007 and January 29, 2008, respectively.
3. Respondent was charged with the commission of several federal criminal offenses in an indictment filed on April 7, 2005.
4. The Vforms required Respondent to execute a statement in which Respondent certified that none of the officers or the president or owner of MDR, among others, was involved in a proceeding that could result in a criminal conviction.
5. Respondent executed the certifications, which were false in light of Respondent's indictment in 2005.<sup>5</sup>

### Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant or principal in a covered transaction as defined in 2 CFR part 180.
2. Respondent's plea that his misconduct resulted from his "misunderstanding of the interpretation of the questions" strains credulity in light of his long career as an attorney and businessman.

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<sup>4</sup> Respondent, who acknowledged that he has "been an attorney/businessman for many years," resigned as president, secretary, and treasurer of MDR effective July 31, 2008.

<sup>5</sup> MDR submitted amended V forms on August 8, 2008.

3. It would require a suspension of ordinary commonsense for a trier of fact of any level of intelligence to conclude that the statement in the Vform, which is written in plain and unambiguous language, could confuse an experienced attorney such that it would lead him to certify falsely to the Vform.<sup>6</sup>
4. HUD relies on the veracity of the certifications during the annual review of a lender to determine the lender's eligibility to retain its FHA approval.
5. A false certification by a lender could lead to HUD's recertifying an ineligible lender, thus putting the FHA insurance at risk.
6. Respondent's false certification is a cause for his debarment because it violated the "terms of a public agreement or transaction so serious as to affect the integrity of" a HUD program. *See* 2 CFR 180.800(b).
7. The evidence is clear, especially with respect to Respondent's experience, that Respondent, notwithstanding the explanations in his submission for his wrongdoing, which are not credible, willfully failed to "perform in accordance with the terms of [a] public agreement[ ] or transaction[ ]," i.e., the Yearly Verification Report, thereby providing a further cause for his debarment. *See* 2 CFR 180.800(b)(1).
8. Respondent's submission of false certifications to HUD demonstrates a lack of business integrity or business honesty that is "so serious or compelling a nature that it affects [his] present responsibility," and gives cause for his debarment. *See* 2 CFR 180.800(d).
9. Respondent's debarment is warranted "to protect the public interest" and to ensure that HUD does not conduct business with a person who is not presently responsible. *See* 2 CFR 180.625.
10. The Government has met its burden of demonstrating that cause exists for Respondent's debarment based on his wrongdoing in submitting false certifications. *See* 2 CFR 180.850 and 855.
11. Some of the reasons or requests advanced by Respondent are either irrelevant to, or have little, if any, effect on, this proceeding (e.g., he did not take any person's money, he has not been disciplined by the Illinois bar, the SEC has not brought any charges against him, he did not engage in the origination of mortgage loans, etc.) or Respondent was the beneficiary of the request (e.g., the presumption of innocence, *cf.* 2 CFR 180.850(b)).
12. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
13. Respondent has raised no credible mitigating factors nor are there any evident in this case to the Debarring Official.

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<sup>6</sup> The certification, which is printed in capital letters at the bottom of the Yearly Verification Report form (Vform), in pertinent part reads as follows:

I CERTIFY THAT NONE OF THE PRINCIPALS, OWNERS, OFFICERS, DIRECTORS, AND/OR EMPLOYEES OF THE ABOVE NAMED MORTGAGEE ARE CURRENTLY INVOLVED IN A PROCEEDING AND/OR INVESTIGATION THAT COULD RESULT, OR HAS RESULTED IN A CRIMINAL CONVICTION, DEBARMENT, LIMITED DENIAL OF PARTICIPATION, SUSPENSION, OR CIVIL MONEY PENALTY BY A FEDERAL, STATE, OR LOCAL GOVERNMENT.

14. The seriousness of Respondent's wrongdoing acts as an aggravating factor justifying a period of debarment. *See* 180.865(a).
15. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
16. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honest and integrity.

#### DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a three-year period from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: \_\_\_\_\_

8/12/09

  
Henry S. Czauski  
Debarring Official